

*The C A S E Relating to the B I L L for Preventing Multiplicity of Vexatious Suits, and for Ascertaining a certain ancient Customary Tyth in the County of Derby. according to the Tenor of certain Decrees in Chancery grounded on divers Tythalls Common Land*

1<sup>st</sup>. **T**HE Payment of a Tyth or Tenth of Lead-Oar, or other Metals in general, is not a Novel or unknown Duty : For although it be not found in the ordinary Tything Tables, nor due of Common Right, yet many of the Antient Kings of this Realm, in granting their Mines to several Persons in divers parts of this Kingdom, did (besides a certain part to themselves and their own Exchequer) usually reserve and provide a Tenth to be paid to Holy Church, as may appear by Grants of Mines made 11 Jun. 8 Ric. 2d ; 9 Feb. 7. Hen. 4. 24 Feb. 5 Hen. 6. 23 Mar. 15 Edw. 4. &c.

2<sup>dly</sup>. From such Grants, the particular Customary Tyth or Tenth of Lead Oar, paid to the Church in all Mineral Parishes of *Derbyshire*, did undoubtedly at first arise, since the Mines there were antiently in the King's own Hands. And it is most equitable for the Miners to pay a Tyth of their Lead Oar, because they (or any Subject of *England*) have the Priviledge to dig and turn up any Mans Ground, in searching for Lead Oar there, whereby vast quantities both of Pasture, Meadow, and Arable Land, are turned into heaps, and made Barren, which would otherwise yield a good Tyth in another kind.

3<sup>dly</sup>. The Miners themselves, upon their Oaths, have more than once acknowledged a Duty of Tyth, payable to the Church as well as other Duties (called *Lott and Cope*) payable to the King or his Farmer, and this they have Entred and Recorded in the Antient Articles of their Liberties and Customs, as a necessary Condition of some of their Priviledges, as may be seen by two Inquisitions, concerning the Liberties and Customs of the Lead-Mines in *Derbyshire*, taken by special Commission, or *Quo Warranto*, from the Crown, upon the Oaths of 24 Jurors, or the Body of the Mine (as they are called) the one *Inquis. Sept. 20. 3 Edw. 6th*, Article 4. the other *May 3d*, in 3 & 4 *Phil: & Mary*, Article 6. both taken at *Wicksworth*.

4<sup>bly</sup>. No less than Twenty thousand Miners, from all Mineral places in *Derbyshire*, whose Names, including their Wives, Servants and Children, are Subscribed to a Petition which was presented to the Parliament in the Reign of *Cha. I.* do all of them acknowledge the payment of this Tyth to the Church, and pleaded in that their Petition, that for paying this Tyth (and the Duty of *Lott and Cope* to the King) they ought to be discharged of some other Payments and Impositions which *Q. Eliz.* first of all, and after her *K. Ja. I. & Ch. I.* had successively and gradually laid upon Lead (to the value of 48 s. per Fudder or Tun) from which Impositions they were and are at this day discharged, upon that their Petition.

5<sup>bly</sup>. Decrees, Orders and Verdicts, in all the Courts of Law or Equity have passed, and Orders of the *Star-Chambers*, and *Council-Board* have been made in favour of the Proprietors of this Tyth, and for settling and recovering their Right when it has been denied. Only the Plaintiffs in those Suits having multitudes of Adversaries, and some of them Rich, were put to vast Expences and Charges in those Suits (one of them only expending above 1500 l. in recovering his 3d part of this Tyth in three Parishes) which being wholly insupportable to four or five poor Parsons and Proprietors of Tyth (who only (in all the County of *Derby*) are now denied this Duty, although their Predecessors, not only at the time of those great Suits, but for many Years since, even till very lately, did receive and quietly enjoy the said Tyth. They therefore solicit this Bill in Parliament, to prevent such Vexatious Suits, and to enforce the Execution, and to make the Benefit of those Decrees as general and extensive to the whole County of *Derby* (where Lead-Oar is got and digged) as the Issues, Verdicts, and Evidences given at the *Common-Pleas-Bar* were, on which those Decrees were Founded.

6<sup>bly</sup>. The Parsons and Vicars in the Mineral Parishes of *Derbyshire*, pay First-fruits and Yearly Tenths to the King expressly, for their Tyth of Lead-Oar, as appears in all or most of their Endowments upon Record, in the First-fruits Office. And they are Rated as high in publick Taxes, as when their Predecessors received this Duty.

7<sup>bly</sup>. Lastly, A Bill was once offered in Parliament, against Tyth-Oar, but was rejected, upon Reasons given by the Ministers and Proprietors of Tyth, wherein they made appear their Right, from many antient Deeds, Accounts, Leases and other Records in the Reigns of *Ed. II. Ed. III. Ric. II. Hen. VI. Ed. IV. Hen. VII. Hen. VIII. Ed. VI.* And the present Suitors for this Bill, can show divers Accounts, Leases and Compositions and Receipts of this Tyth by their Predecessors.

## Appendix.

The Petitioners Right to his Tyth appearing by this Case and Decree to be so plain and evident, that it seems Recoverable at Law: It may be asked, why we trouble the Parliament with it.

To which we Humbly Answer:

**B**ecause notwithstanding the clearness of our Title in Law, yet the Litigiousness of our Opponents hath kept us out of Possession for above Twenty Five Years; by which means we cannot now have those *general Issues* upon which this Tyth was formerly Established (as may be seen in the Decree) nor yet those Living Witnesses, and Evidence *Viva Voce* which our Predecessors had upon their particular and local Issues.

II. Because by withholding so considerable a part of our Maintenance, we are totally disabled to follow so many tedious and chargeable Suits at Law, as by the sad experience of some of our Predecessors, we certainly know the opponents of this Tyth will put us upon: It not being to be supposed, that a Clergy-man whose Benefice is but 50, 60, or 70 *Pounds per Annum*, should expend 600 or 800 *Pounds* (as some of our Predecessors who had great temporal Estates, besides their Benefices, have done) in vindicating this Right of his Church in which he has yet no Estate of Inheritance, nor perhaps much probability of seeing the Suit ended during his Life.

III. Our Right and Title (as appears by the Decree) having been fully tryed and cleared in all the Courts of Law and Equity upon *general Issues* for the whole County, and those directed by special Order of the Privy-Counsel, on purpose to avoid multiplicity of Suits: We humbly conceive it needs not be sent back again to the Law upon *Local and particular Issues*, which are only a late Invention and Design of some Persons *Cunning in the Law*, to defeat the intent of those former *general Issues* and the Verdicts given upon 'em, and to multiply as many Suits as there are Parishes, Places, or Proprietors who claim this Tyth.

IV. If we were able to follow so many several Suits at Law, and should prevail in 'em all; yet would not this secure us or our Successors in the quiet possession of this Tyth, without an Establishment of the general Right for the whole County of *Darby*; because the multitude of our Opponents are on all occasions ready to renew their Suits, to seize the Tyth to themselves for Maintenance of Suit against the Parson, and upon the Death, Change, or Poverty of any Incumbent, to deny former Decrees, and take advantage of the Clemency of our Predecessors in not always exacting a constant Tenth, thereby to destroy or avoid our Right upon strict Local and particular Issues at Common Law.

V. The Opponents of this Duty having formerly followed this Cause through all the Courts of Law and Equity, and before the Privy-Council, and being Cast and Condemn'd in all, did themselves bring this Matter into the Parliament, where the general Right to this Tyth (being acknowledged on all sides to be one and the same in all Parishes within the County of *Darby*) was upon solemn Examination and Debate so far approved in Parliament, as to reject and cast out a Bill brought against this Tyth; which gives us hopes, that as the Honourable House did once receive and debate the Reasons of a Bill brought against us; so they will not now reject the Consideration of a Bill brought for the quiet Establishment of Us in the possession of that Right which has been by them so far approved. But especially the poor Clergy-Petitioners who only (of almost all others) are now denied and kept out of this Tyth; do therefore humbly apply themselves for Relief to the two most Honourable Houses of Parliament, as the Common Patrons of their injured and despoiled Churches, which for the Reasons aforesaid, cannot Relieve themselves by any other way.

137. 1. 292

**The CASE**  
Relating to the BILL for  
Preventing Vexatious Suits,  
and Ascertaining a certain  
Customary TYTH in the  
County of *DERBY*.

